

S/N 10/648,590

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Ricky W. Purcell et al.

Examiner: Aaron Roane

Serial No.: 10/648,590

Group Art Unit: 3739

Filed: August 25, 2003

Docket: 1443.053US1

Title: COLD PACK

REPLY BRIEF UNDER 37 C.F.R. § 41.41

MS APPEAL BRIEF - PATENTS

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

This Reply Brief is presented in response to the Examiner's Answer dated September 13, 2007, sent in answer to Appellant's Appeal Brief filed June 7, 2007.

Please charge any required additional fees or credit overpayment to Deposit Account No. 19-0743.

REPLY

Comments by Appellant Relating to "Response to Argument" in the Examiner's Answer

I. The Examiner states at pages 7-8 of the Examiner's Answer that:

"Applicant characterizes the seams (24 and 26) of Dunshee et al. as "single use," see page 10, first full paragraph. The examiner does not dispute that the seams are single use in that they are rupturable seams. However, this term "single use" certainly only applies to the seams and not the entire device (10) of Dunshee et al. since Dunshee et al. discloses the reusable nature of the device, see col. 5, lines 41-60. Again, it should be noted Dunshee et al. provides 1) what could be characterized as a "single use" or "single occurrence" endothermic device and 2) a reusable thermal device in that A) first the contents of 18 and 20 are mixed, i.e., the liquid (19) and the solute (21), thus producing an endothermic or exothermic reaction depending on the types of liquids and solutes used, B) then after the mixture of liquid/solvent (19) and solute (21) has returned to ambient temperature, membrane 26 is ruptured in order to add to the mixture of (19) and (21) the gelling agent (23) to provide a reusable gel pack."

Appellant respectfully notes that Avery teaches away from any combination with Dunshee and/or Sabin because Avery teaches a thermal pack that does not require any mixing of materials (see Avery at col. 1, lines 53 and 56). In contrast, Dunshee and Sabin relate to a cold pack where the liquid and the cold particulate material are initially segregated and then a membrane is ruptured in order to promote mixing the two items together to start the endothermic reaction. Once the liquid and the cold particulate material are mixed together in the cold packs disclosed in Dunshee and Sabin, the endothermic chemical reaction can not be carried out again. Appellant respectfully submits that based on the non-mixing thermal pack teachings of Avery, one of ordinary skill in the art would look away from the rupturing and mixing devices that are disclosed in Dunshee and Sabin.

II. The Examiner further states at pages 8-9 of the Examiner's Answer that:

"Next, and most importantly, Applicant asserts (see page 10, second full paragraph, lines 9-11) Dunshee et al. do not 'disclose an absorbent core that retains the endothermic solution as indicated by the Examiner because nothing in the enclosure retains the cooling gel to spread the cooling gel throughout the

enclosure.' The examiner completely disagrees and has clearly pointed out that the absorbent core disclosed by Dunshee et al. is (23), the gelling agent. This particular absorbent core is a gelling agent that absorbs the solution when seams 24 and 26 are ruptured. It should be pointed out that although Applicant may wish to distinguish the presently claimed absorbent core of the presently claimed invention over that of a liquid/solution absorbing gelling/gel agent (disclosed by both Dunshee et al. and Sabin), there is no structure other than the fibrous material (provided by Avery) that distinguishes over the prior art in structure or function. Additionally, Applicant has attempted in the past to add further limiting structure in the "sheet-like" recitation in the response filed 1/27/2006 that would overcome the interpretation that a collection/layer of gelling agent powder/particulate meets the recited absorbent layer. This "sheet-like" recitation was rejected under a 112, 1st paragraph and subsequently removed by Applicant (see response filed 4/27/2006). Presently, the examiner contends there is nothing in Applicants' disclosure that precludes the examiner from interpreting the gelling agent ((23) of Dunshee et al. and (26) of Sabin) as an absorbent layer."

Appellant respectfully traverses the Examiner's assertion because Dunshee provides no description as to an absorbent core that retains an endothermic solution because the cooling gel which is formed upon mixing in Dunshee is actually the endothermic solution itself. Therefore, Dunshee does not disclose an absorbent core that retains the endothermic solution as indicated by the Examiner because nothing in the enclosure retains the cooling gel to spread the cooling gel throughout the enclosure.

In addition, Appellant respectfully notes that Sabin provides no teaching or suggestion as to an absorbent core that retains an endothermic solution because the cooling gel which is formed upon mixing in Sabin is itself the endothermic solution. Therefore, Sabin does not disclose an absorbent core that retains the endothermic solution as indicated by the Examiner because nothing in the enclosure retains the cooling gel to spread the cooling gel throughout the enclosure.

Appellant also respectfully notes that fibrous material disclosed in Avery does not retain an endothermic solution to spread the endothermic solution. In addition, the drawings in Avery illustrate that the fibers in Avery are not part of any type of structure (i.e., like a "core") such that Avery does not disclose an absorbent core.

Therefore, the cited combination does not describe either singularly, or in combination, (i) "a fibrous layer within said enclosure, said fibrous layer including fibers that retain said

endothermic solution within said enclosure to spread said endothermic solution throughout the interior of said enclosure” as recited in claim 6; or (ii) “an absorbent core within said enclosure, said absorbent core being formed at least partially of fibers which retain said endothermic solution within said enclosure to spread said endothermic solution throughout the interior of said enclosure” as recited in claim 12.

III. The Examiner further states at page 10 of the Examiner’s Answer that: “So the prior art combination discloses a thermal device having an enclosure, an absorbent core (the gelling agent) that absorbs a liquid to produce an endothermic reaction (Dunshee et al. and Sabin), wherein the gel/gelling agent also comprises fibers (Avery).” Appellant respectfully traverses the Examiner’s assertion because as discussed above, Dunshee, Sabin and/or Avery do not teach or suggest an absorbent core as recited in the claims, especially an absorbent core (or layer) that includes fibers which retain an endothermic solution.

IV. The Examiner further states at page 11 of the Examiner’s Answer that: “Sabin is added to Dunshee et al. to teach the alternate modality of mixing the solvent, endothermic solute and gelling agent initially and Avery is added to teach the use of fibers in the gel in order to increase viscosity and improve heat capacity. The examiner has attempted in the past and present, to point out where in the secondary teaching references, what the motivation is and exactly which column and line the particular motivation lies in.” Appellant again submits that the only objective evidence relating to (i) “a fibrous layer within said enclosure, said fibrous layer including fibers that retain said endothermic solution within said enclosure to spread said endothermic solution throughout the interior of said enclosure” as recited in claim 6; or (ii) “an absorbent core within said enclosure, said absorbent core being formed at least partially of fibers which retain said endothermic solution within said enclosure to spread said endothermic solution throughout the interior of said enclosure” as recited in claim 12 is found in Appellant’s disclosure.

V. The Examiner further states at page 12 of the Examiner's Answer that: "The examiner fails to find any merit in the argument that Avery teaches away from the disclosure of Dunshee et al. and Sabin." Appellant again submits that based on the non-mixing thermal pack teachings of Avery, one of ordinary skill in the art would look away from the rupturing and mixing devices that are disclosed in Dunshee and Sabin.

Conclusion

Applicant respectfully submits that the claims are in condition for allowance and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's attorney at (262) 646-7009 to facilitate prosecution of this application.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 19-0743.

Respectfully submitted,

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CANDIS IBUENDING

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